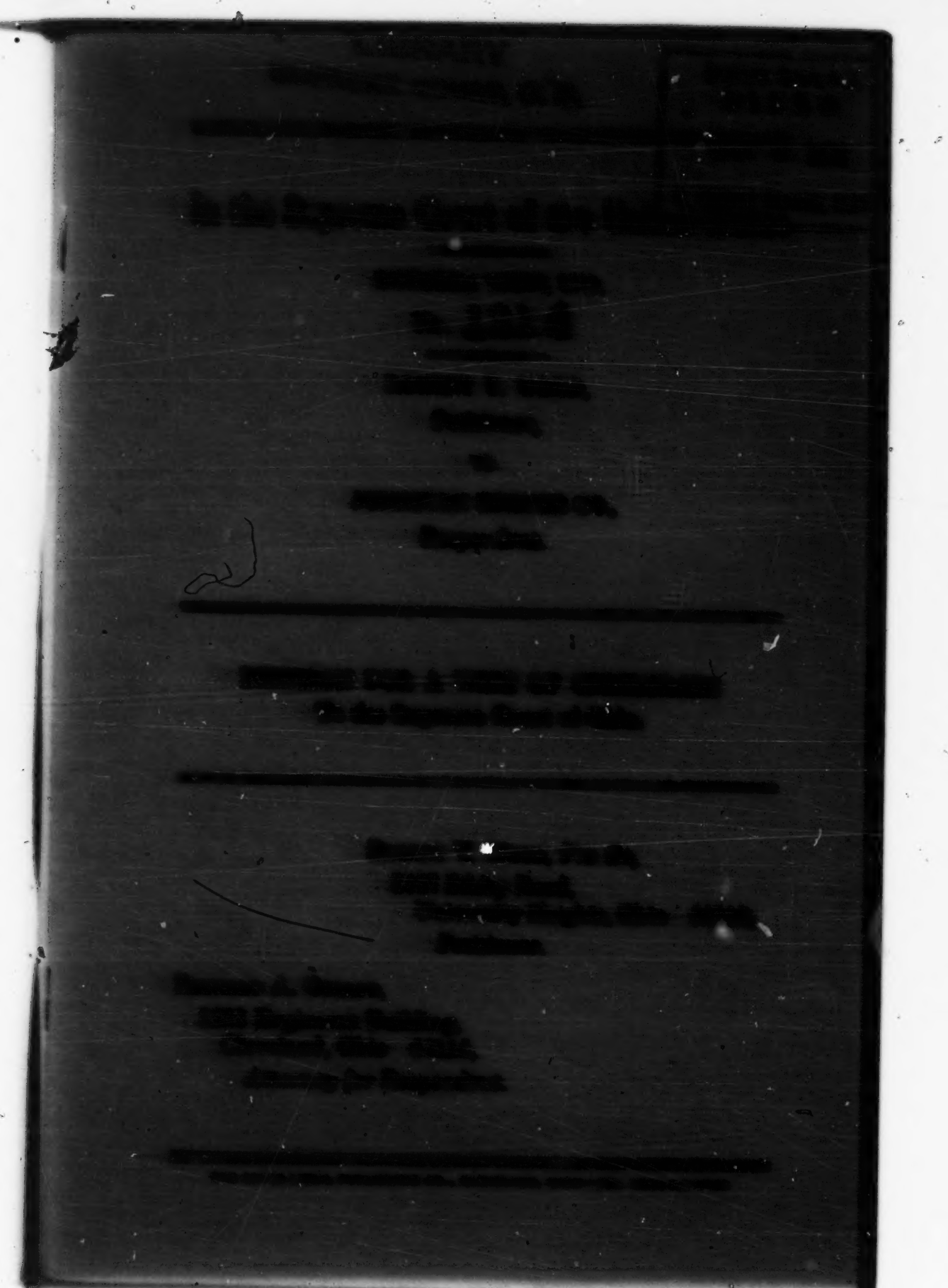

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In the Supreme Court of the United States

OCTOBER TERM, 1970.

No. _____

ROBERT T. WOOD,
Petitioner,

vs.

JOHNSTON BRONZE CO.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI To the Supreme Court of Ohio.

The petitioner, Robert T. Wood, asks that a Writ of Certiorari issue to review the judgment of the Supreme Court of Ohio, made and entered on October 14, 1970 (Appendix pp. 19, 20) denying petitioner's motions for appeal as of right and for an order directing the Court of Appeals to certify its record. The consequences of the denial of these motions was the affirmance of the Ohio Court of Appeals denial of Petitioner's right to appeal from an adverse ruling on a motion for summary judgment granted by the Court of Common Pleas of Cuyahoga County, Ohio in favor of the respondent.

OPINIONS IN THE COURTS BELOW.

The Supreme Court of Ohio did not write an opinion in this case. Its final orders are found in Appendix pp. 19, 20. The Court of Appeals for the Eighth Judicial District, County of Cuyahoga, Ohio did not write an opinion but the three rulings of the Court of Appeals are reproduced in Appendix p. 18. The Court of Common

Pleas of Cuyahoga County issued no opinion but the journal entry containing its finding of fact and conclusions of law is set out in Appendix p. 17.

JURISDICTION.

The final judgment of the Supreme Court of Ohio was entered on October 14, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3). Petitioner claims that his property was taken and, as a result, he was deprived of his property by the orders of the State of Ohio in violation of rights, privileges and immunities secured by the Constitution of the United States.

QUESTIONS PRESENTED.

1. Whether the Full Faith and Credit granted by Section 1, Article IV, of the United States Constitution shall be extended to a foreign cognovit judgment rendered in the Commonwealth of Pennsylvania where the jurisdiction of the Court was controverted in that the warrant of attorney was unauthorized since it was obtained fraudulently by the respondent employer who used deceit, misrepresentation, and duress to obtain the petitioner's signature on a receipt and where the petitioner was denied the opportunity to defend in the judgment proceedings.

2. Whether petitioner was denied the Due Process of Law and the Equal Protection of the Laws guaranteed by the Fourteenth Amendment and also guaranteed by Section 2, Article IV, of the United States Constitution when the employee petitioner was denied Due Process and Equal Protection similar to that afforded the employee who was protected by the Federal Employers' Liability Act in a similar fact situation which arose in this Court in *Dice v. Akron, Canton & Youngstown R. R. Co.*, 342 U.S. 359 (1952).

3. Whether petitioner was denied the Due Process of Law and the Equal Protection of the Laws guaranteed by the Fourteenth Amendment when he was denied knowledge of the court's decision.

4. Whether petitioner was denied the Due Process of Law and the Equal Protection of the Laws guaranteed by the Fourteenth Amendment when the trial judge determined genuine issues of fact relevant to the validity of a purported warrant of attorney to confess judgment and allowed respondent's motion for summary judgment when such issues should have been determined by a jury.

THE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION.

Article IV:

Section 1. Full Faith and Credit shall be given in each State to the Public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Amendment XIV (quoted in pertinent part):

* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2309.36, Ohio Revised Code:

In pleading a judgment or other determination of a court, or of an officer of special jurisdiction, it is sufficient to state that such judgment or determination was given or made, if such allegation is controverted, the party pleading must establish, on the trial, the facts conferring jurisdiction.

2311.041, Ohio Revised Code (quoted in pertinent part):

Summary judgment may be granted in a civil action as provided in this section.

(B) The hearing on a motion for a summary judgment shall not be less than ten days after the date of the filing thereof. Notice of the filing and the date of the hearing of such motion shall be given by certified or registered mail, or personally, to the opposing party or his counsel of record at least five days prior to the hearing, unless waived. The adverse party prior to the day of hearing may file opposing affidavits. Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions of the genuineness of papers, or documents, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, previously filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this section. A summary judgment shall not be rendered unless it appears from the pleadings, depositions, answers to interrogatories, written admissions of the genuineness of papers or documents, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, previously filed in the action, and only

therefrom, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made; the party against whom the motion for summary judgment is made is entitled to have such pleadings, depositions, answers to interrogatories, written admissions of the genuineness of paper or documents, affidavits, transcripts of evidence in the pending case, and written stipulations of fact construed most strongly in his favor. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

2505.07, Ohio Revised Code (quoted in pertinent part):

After the journal entry of a final order, judgment, or decree has been approved by the court in writing and filed with the clerk for journalization, or after the entry of other matter for review, the period of time within which the appeal shall be perfected, unless otherwise provided by law, is as follows:

(A) Appeals to the supreme court or to courts of appeals, or from municipal courts and from probate courts to courts of common pleas, shall be perfected within twenty days.

RULES OF PRACTICE OF THE COURTS OF APPEALS OF OHIO.

Rule III. Notice, Briefs and Arguments on Applications, Motions and Demurrers.

(1) No application, motion, or demurrer will be considered, heard or determined until proof of notice to opposite counsel of the filing thereof is filed with the clerk, applications, motions and demurrers shall be accompanied by briefs, and opposite parties shall file answering briefs within ten (10) days thereafter.

STATEMENT OF THE CASE.

The respondent, who was the employer of the petitioner, by virtue of a defective warrant of attorney allegedly authorized by a cognovit note received a judgment against the petitioner in the amount of two thousand dollars ($2,000.00) in the Common Pleas Court of Lawrence County, Commonwealth of Pennsylvania. The respondent had induced the petitioner to borrow money which was to be used exclusively for the benefit of the respondent and, thereafter, the respondent tricked the employee petitioner into signing what the respondent described as a receipt. Respondent also took judgment for more than was due on the note since the petitioner had repaid five hundred dollars ($500.00) on the note.

The petitioner was denied the opportunity to present a defense since he was completely unaware of the judgment proceedings even though he was in residence in Lawrence County, Commonwealth of Pennsylvania on October 9, 1964, the date of the judgment rendition.

Respondent filed a Petition for Money Only on Foreign Judgment in the Court of Common Pleas of Cuyahoga County, Ohio on October 7, 1969. Petitioner filed Petitions to Vacate the Foreign Judgment on November 11 and November 28, 1969. Respondent filed a Motion for Summary Judgment on November 18, 1969 and this Motion was set for hearing on December 12, 1969. However, counsel for the respondent caused this date to be advanced two days to December 10, 1969.

During the hearing, the trial judge admitted that the petitioner had a good defense to the judgment in the foreign court but, nevertheless, the respondent's motion for Summary Judgment was granted.

The petitioner's Motion for a New Trial was allowed and the hearing was held on February 5, 1970. The Trial

Judge refused to render a decision at the close of the hearing and stated that he would render his decision at a later time. This decision was never made known to the petitioner; in fact, notice of or knowledge concerning the decision was deliberately withheld from the petitioner and it was kept in secrecy until April 8, 1970, when counsel for the respondent advised the petitioner that the trial judge had rendered his decision on the very next day following the hearing, February 6, 1970, and that the decision affirmed the respondent's Motion for Summary Judgment.

The denial of notice and knowledge of the lower court's decision resulted in a complete denial of the petitioner's right of appeal through the operation of section 2505.07, of the Ohio Revised Code which states that an appeal to a Court of Appeals must be perfected within twenty days.

Nevertheless, the petitioner filed a cash bond in the amount of three thousand and eighty seven dollars ($3,087.00) and filed three separate motions in the Court of Appeals for the Eighth Judicial District, Cuyahoga County, Ohio. The Court of Appeals dismissed petitioner's appeals and allowed respondent's Motion to Dismiss without even considering the petitioner's Motions for Right of Appeal. This was in direct violation of Rule III of the Rules of The Courts of Appeals of Ohio.

On October 14, 1970, the Ohio Supreme Court dismissed petitioner's appeal without opinion on the ground "that no substantial constitutional question exists herein." Appendix p. 19.

Petitioner's claim that he was denied federal constitutional rights was clearly asserted in the Common Pleas Court of Cuyahoga County, in the Court of Appeals of Ohio, and in the Ohio Supreme Court. In his Petition to Vacate the Foreign Judgment in the Court of Common Pleas, petitioner contended:

60. The Plaintiff, in his capacity of employer, exerted influence over the defendant employee in the execution of the blank note signed by the defendant.

69. The defendant denies the existence of a valid foreign judgment.

In his motion for a new trial in the Court of Common Pleas, petitioner contended:

> The defendant states that three months later in October, 1964, the plaintiff impressed the fraudulently procured Warrant of Attorney, without any knowledge by the defendant, upon the Foreign Court and now the plaintiff is attempting to use the Laws of the United States through the Full Faith and Credit Clause in the United States Constitution to impress a void judgment upon this Court.

In his 2nd brief filed in his motion for a new trial in the Court of Common Pleas, petitioner contended:

> The defendant states that a void judgment cannot be enforced anywhere and that, where there is a fraud impressed upon the Court, the Full Faith and Credit Clause of Section 1, Art. 4, United States Constitution, does not apply.

In his Application for Leave to Present Additional Evidence in the Court of Appeals, petitioner contended:

> The Appellant requests permission to enter evidence to show that the Appellant had no notice of the Trial Court's re-affirming on February 6, 1970 of Appellee's Motion for Summary Judgment, until notice was received from Attorney for Appellee on April 10, 1970.

In his Motion to Allow Defendant-Appellant's Right to Appeal in the Court of Appeals, petitioner contended:

> The defendant-appellant submits that the Trial Court knew what its decision was going to be at the

close of the hearing on February 5, 1970, or should have known, and that the Trial Court's failure to notify the defendant-appellant of its decision was prejudicial to the rights of the defendant-appellant in that it amounted to an abuse of discretion and denied due process of law to the defendant-appellant.

The defendant-appellant asserts that the plaintiff-appellee employer, who occupied a position of trust, used misrepresentation to induce the defendant-appellant to sign the note, as a receipt, when the defendant-appellant had neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms, and as a result the Court did not acquire jurisdiction over the person of the defendant-appellant. The defendant-appellant submits that a void judgment cannot be enforced anywhere and that, where there is a fraud impressed upon the Court, the Full Faith and Credit Clause of Section 1, Art. 4, United States Constitution, does not apply.

In his Application for Re-Hearing and for Reconsideration in the Court of Appeals, petitioner contended:

The defendant-appellant asserts that the Courts of Ohio have, in effect, applied a BADGE OF HONOR to a judgment which was fraudulently procured in the foreign court by the scheming plaintiff-appellee employer. The defendant-appellant submits that this purpose is not sanctioned by The Full Faith and Credit Clause of Section 1, Art. 4, United States Constitution.

The defendant-appellant submits that, even though it does not appear in the record, the Trial Court admitted that the defendant-appellant had a defense in the foreign court. The defendant-appellant asserts that the defense in the foreign court is also available in the Courts of Ohio, as well as in the Courts of the United States.

In the memorandum invoking the jurisdiction of the Ohio Supreme Court on Page 10 under the heading BRIEF, petitioner argued:

> (c) This case involves a substantial constitutional question and is of public interest because it concerns The Full Faith and Credit Clause of Section 1, Art. 4, United States Constitution.

On Page I, under the heading "Proposition of Law No. 1," petitioner argued:

> * * * where the court renders a judgment against the defendant on such unauthorized power to confess judgment, the judgment is utterly void for lack of jurisdiction as to either the subject matter or the person of the defendant and such judgment rendered in a court of a sister state is not entitled to the protection conferred by the full faith and credit clause of the United States Constitution when it is made the basis of an action in the Courts of Ohio.

On Page X, under the heading "Proposition of Law No. 10," petitioner argued:

> * * * there is a presumption that the court did not want the party seeking relief to know of an unfavorable decision at the close of the hearing on February 5, 1970 and this amounts to a denial of due process to a party who is representing his own interests without benefit of counsel; and further, where the journal entry is entered the very next day, there arises a reasonable presumption that the court knew what its decision was going to be during the hearing as well as the close of the hearing and that the court denied this decision purposely and deliberately to trap the party who would have benefited from the knowledge of the court's decision, * * *.

On Page XI, under the heading "Proposition of Law No. 11," petitioner argued:

Where a court of appeals allows a motion to dismiss appeal without even considering the opposing party's answering brief in the form of a motion for his right to appeal which was filed within the ten day rule, this is a denial of due process and a gross abuse of discretion.

REASONS FOR GRANTING THE WRIT.

I. The Holdings Below Run Counter to This Court's Rule That Mere Recitals of Jurisdiction Are Not Conclusive and Do Not Bar Inquiry as to Jurisdiction or Jurisdictional Facts, and That a Judgment of a Sister State May Be Impeached for Want of Jurisdiction Notwithstanding Its Recitals.

Also see *Bell v. Bell*, 181 U.S. 175; *Brown v. Fletcher*, 210 U.S. 82; and *Bigelow v. Old Dominion Copper Mining & Smelting Co.*, 225 U.S. 111. The jurisdiction of the court which rendered judgment may always be examined, and if found wanting no effect need be given to the judgment. *Spokane & I. E. R. Co. v. Whitley*, 237 U.S. 487, and *Thompson v. Thompson*, 226 U.S. 551.

Full Faith and Credit does not convert a fraudulently obtained judgment into a valid judgment when the judgment, void from its inception, is carried across State lines. The petitioner was purposely denied the opportunity to defend against the fraudulently obtained judgment even though the petitioner was in residence in the County and State on the date of the judgment. Since the judgment could not have been maintained in the County and State of rendition, due to fraud practiced by the respondent, it is intolerable and inconceivable to believe that an avowed purpose of Full Faith and Credit is to cure such a patent defect. The perpetration and enhancing of fraud is not a purpose of Full Faith and Credit, but rather its sole purpose is to preserve valid and proper proceedings. Neither

is its purpose to completely deny defenses and bar the door when it is used as a mere vehicle to nurture and revive a judgment which was conceived in fraud and secrecy on October 9, 1964 and one which lived in silence and secrecy until October 7, 1969 when the respondent removed the cloud of fraud and secrecy and draped it with the Badge of Honor of Full Faith and Credit in the Courts of Ohio; otherwise it would have expired in secrecy on October 9, 1969, in the State of rendition.

It was the purpose of the respondent, relying upon earlier decisions where the question of jurisdiction was not open to inquiry, to completely cut off the available defenses of the petitioner. A judgment void in its inception is void in a sister state as well as the state of rendition. *Larrick v. Walters*, 39 Ohio App. 363, 177 N.E. 642 and *Schwartz v. Schwartz*, 113 Ohio App. 275. Yet the Ohio courts have rejected the jurisdiction requirement claimed here and they have done so in a manner contrary to the holdings of this Court as well as other decisions by the Ohio courts.

The foreign judgment in this case could not have been enforced, nor was it enforced, in the state of rendition; therefore, its defects are not cured by the Full Faith and Credit Clause of Section 1, Article IV, of the United States Constitution.

There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments; see *United States v. Throckmorton*, 98 U.S. 61 (1878).

> A judgment rendered by a court which is without jurisdiction over the parties or res is not entitled to credit in other states. D'arcy v. Ketchum, 11 How. 165 (1850).

The Ohio courts also rejected Section 2309.36 of the Ohio Revised Code.

II. The Case Affords the Court an Opportunity to Clarify and to Extend Fundamental Constitutional Guarantees and Equal Protection to Those Citizens and Employees Not Protected by a Federal Statute Such as the Federal Employers' Liability Act But Who, Nevertheless, Are Deserving of Similar and Equal Protection Under the United States Constitution and Its Amendments.

The petitioner should have the additional positive protection guaranteed under the Full Faith and Credit Clause and the due process of law guarantees of the Fourteenth Amendment where he was induced to sign an instrument through deliberate and false misrepresentations made by the respondent. These same set of facts arose with an employee who was protected by the Federal Employers' Liability Act and this Court stated (342 U.S. at page 362):

> "A release of rights under the Act is void when the employee is induced to sign it by the deliberately false and material statements of the railroad's authorized representatives made to deceive the employee as to the contents of the release," *Dice v. Akron, Canton & Youngstown R. R. Co.*, 342 U.S. 359 (1952).

By virtue of the same reasoning, this Court should protect the employee petitioner by virtue of Section 2, Article IV, of the United States Constitution and by virtue of the Fourteenth Amendment to the United States Consitution which sets out the Due Process of Law guarantees and the guarantees that every citizen shall have the Equal Protection of the Laws. This may afford this Court the opportunity to protect its citizens who are not employees protected under the Federal Employers' Liability Act but who, nevertheless, are deserving of broad protection under the United States Constitution and its Amendments.

III. The Holdings Below Are in Direct Conflict With the Fundamental Concepts of Due Process of Law Guaranteed by the United States Constitution and the Fourteenth Amendment.

The petitioner in this case was denied knowledge of the court's decision following his hearing on a Motion For a New Trial. Instead of rendering a decision directly to the petitioner, the trial judge stated at the close of the hearing that he would render his decision at a later time. This decision was never made known to the petitioner, and as a result, the petitioner lost his right of review through the operation of Section 2505.07 of the Ohio Revised Code. Nothing in the record of this case contravenes this statement.

The Appellate Procedure Act, Section 2505.07 of the Ohio Revised Code was not enacted to deny Due Process of Law guaranteed by the Fourteenth Amendment; but it was enacted to assist the parties in obtaining substantial justice. *In Re Wisner*, 148 Ohio St. 31, 72 N.E.2d 751.

Notice, a fair trial, and the right to be informed of the Court's decision are fundamental rights guaranteed to all individuals. Trickery and secret dealings should be abolished from all Judicial Proceedings.

The rights incorporated into the Fourteenth Amendment by virtue of its Due Process Clause is without meaning if a court is permitted to deny a party knowledge of the court's decision. Neither the courts nor the legislature may deny fundamental rights guaranteed under the United States Constitution and its Amendments. *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673 (1930).

IV. The Holdings Below Are in Direct Conflict with the Fundamental Concepts of Due Process of Law Guaranteed by the United States Constitution and the Fourteenth Amendment.

A motion for summary judgment should not be allowed where there are genuine issues of fact proper to be determined by a jury. *Dice v. Akron, Canton & Youngstown R. R. Co.*, 342 U.S. 359 (1952) and *Camerlin v. New York Central R. R. Co.*, 199 F.2d 698 (1952).

A motion for summary judgment was improperly allowed in this case which is contrary to the holdings of this Court and to the decisions of the courts of Ohio. *Sartor v. Arkansas Natural Gas Corp.*, 321 U.S. 620 (1944) and *Priester v. State Foundry Co.*, 172 Ohio St. 28, 173 N.E.2d 136.

The entire decision in this case, which was adverse to the petitioner, was controlled by one trial judge since neither the Court of Appeals nor the Ohio Supreme Court looked at the records of the case.

This amounts to a complete denial of rights guaranteed by the United States Constitution and the Fourteenth Amendment.

The action of the Court of Appeals was so prompt that the petitioner's Right of Appeal was denied before it was physically filed in the Court. This action was contrary to Rule III of Rules of Practice of The Courts of Appeals of Ohio.

CONCLUSION.

The question of jurisdiction involves substantial constitutional rights when Full Faith and Credit is used as a Badge of Honor to transform a void judgment in one State to a valid judgment in a Sister State. Since the facts of the subject case are particularly clear and since the courts

failed to invoke any Constitutional Rights, the Court is urged to allow certiorari, to clarify and to extend fundamental Constitutional guarantees, and to vindicate petitioner's Constitutional Rights.

Respectfully submitted,

ROBERT T. WOOD, *Pro Se*,
Petitioner.

APPENDIX.

JOURNAL ENTRY OF THE COURT OF COMMON PLEAS.

Case No. 877,914.

IN THE COURT OF COMMON PLEAS

STATE OF OHIO, CUYAHOGA COUNTY, SS.

JOHNSON BRONZE CO.,

Plaintiff,

vs.

ROBERT T. WOOD,

Defendant.

On the 10th day of December, 1969, this cause came on for hearing upon motion of plaintiff, Johnson Bronze Co., for Summary Judgment.

The Court finds that the defendant, Robert T. Wood, was duly served with a copy of plaintiff's motion by certified U.S. Mail, and that both the plaintiff and the defendant appeared for hearing, the plaintiff appearing by and through its attorney and the defendant appearing individually on behalf of himself. Upon consideration of the pleadings, plaintiff's brief in support of its motion, and the law, this Court finds that judgment should be for plaintiff.

IT IS, THEREFORE, ORDERED that plaintiff recover of and from the defendant, Robert T. Wood, the sum of Three Thousand Eighty Seven Dollars ($3,087.00) (which includes interest at the rate of six percent per annum from May 13, 1963, until the date of judgment, attorney's commission, and costs of foreign judgment), and all costs of the present action.

RULINGS OF THE COURT OF APPEALS.

No. 30,397.

IN THE COURT OF APPEALS
EIGHTH JUDICIAL DISTRICT OF OHIO,
COUNTY OF CUYAHOGA.

JOHNSON BRONZE CO.,

Plaintiff-Appellee,

vs.

ROBERT T. WOOD,

Defendant-Appellant.

May 20, 1970. "Motion by plaintiff appellee to dismiss appeal granted. Appeal dismissed at appellant's costs. Exc. Mandate to issue."

"Application by defendant appellant for leave to present additional evidence in addition to pleadings presented in trial court overruled. Exc. See entry this day in Motion 20843 [above]."

WHITE, C.J., DAY, J., MANOS, J. Concur.

June 3, 1970. "Motion by defendant appellant for right to appeal overruled. Exc. See entry of May 20, 1970."

WHITE, C.J., DAY, J., MANOS, J. Concur.

June 10, 1970. "Application by defendant appellant for rehearing and for reconsideration of motion to allow right to appeal overruled. Exc."

ORDERS OF THE SUPREME COURT OF OHIO.

(Entered October 14, 1970.)

No. 70-390.

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO, CITY OF COLUMBUS.

JOHNSTON BRONZE CO.,
Appellee,

vs.

ROBERT T. WOOD,
Appellant.

APPEAL FROM THE COURT OF APPEALS FOR CUYAHOGA COUNTY.

This cause, here on appeal as of right from the Court of Appeals for Cuyahoga County, was heard in the manner prescribed by law, and; no motion to dismiss such appeal having filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the COMMON PLEAS COURT to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for CUYAHOGA County for entry.

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS FOR CUYAHOGA COUNTY TO CERTIFY ITS RECORD.

It is ordered by the Court that this motion is overruled.

MANDATE.

To the Honorable Common Pleas Court
Within and for the County of Cuyahoga, Ohio, Greeting:

The Supreme Court of Ohio commands you to proceed without delay to carry the following judgment in this cause into execution:

Appeal dismissed, sua sponte, no substantial constitutional question involved.

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SUPREME COURT

Supreme Court, U.S.
FILED
MAR 1 1971
E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1214.

ROBERT T. WOOD,

Petitioner,

vs.

JOHNSTON BRONZE CO.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO.

BRIEF OF RESPONDENT IN OPPOSITION.

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II. Respondent affirmatively showed that the Court of Common Pleas, Lawrence County, Commonwealth of Pennsylvania, rendered a judgment against petitioner, and that said court had jurisdiction to render said judgment, thereby complying with Ohio Revised Code, section 2309.36, Pleading and Proving Judgment 4

III. Petitioner's claim is unsubstantial and frivolous thereby entitling respondent to damages pursuant to 28 U.S.C. § 1912 5

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In the Supreme Court of the United States

OCTOBER TERM, 1970.
No. 1214.

ROBERT T. WOOD,
Petitioner,

vs.

JOHNSTON BRONZE CO.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO.

BRIEF OF RESPONDENT IN OPPOSITION.

STATEMENT OF THE CASE.

Respondent obtained a judgment against petitioner in the Common Pleas Court of Lawrence County, Commonwealth of Pennsylvania, as judgment was confessed on a warrant of attorney October 9, 1964. On October 15, 1969, in attempting to transfer said judgment to the jurisdiction of the Ohio courts, respondent filed a petition for money only on foreign judgment in the Cuyahoga County Court of Common Pleas, State of Ohio. Petitioner was personally served with process, and respondent was subsequently awarded summary judgment on said petition December 10, 1969. Petitioner, a third year law student choosing to represent himself, subsequently filed a motion for new trial December 20, 1969, which motion was treated as a motion for reconsideration. Said motion was granted February 6, 1970, and after reconsideration, the court sustained its prior ruling and upheld granting respondent's motion for summary judgment. Petitioner sub-

sequently filed a notice of appeal to the Court of Appeals, Eighth Judicial District, Cuyahoga County, April 20, 1970. On May 11, 1970, respondent filed a motion to dismiss appeal on the ground that said appeal was not properly perfected pursuant to Ohio Revised Code, section 2505.07. Respondent's motion to dismiss was granted, and said appellate court subsequently denied petitioner's motion to allow right to appeal, motion for leave to present additional evidence, and application for re-hearing. Petitioner subsequently filed a notice of appeal to the Ohio Supreme Court June 8, 1970, said court denied petitioner's motion supporting jurisdiction October 14, 1970. Petitioner subsequently filed this petition for writ of certiorari.

QUESTIONS PRESENTED.

1. Whether the dismissal of petitioner's appeal by the Court of Appeals, Eighth Judicial District, State of Ohio, on the ground that petitioner did not timely file his notice of appeal presents a question involving petitioner's rights, privileges, and immunities secured by the Constitution of the United States.

2. Whether respondent affirmatively showed that the Court of Common Please, Lawrence County, Commonwealth of Pennsylvania, rendered a judgment against petitioner, and that said court had jurisdiction to render said judgment, thereby complying with Ohio Revised Code, section 2309.36, Pleading and Proving Judgment.

3. Whether petitioner's claim is unsubstantial and frivolous thereby entitling respondent to damages pursuant to 28 U.S.C. § 1912.

REASONS FOR DENYING WRIT.

I. The dismissal of petitioner's appeal by the Court of Appeals, Eighth Judicial District, State of Ohio, on the ground that petitioner did not timely file his notice of appeal does not present a question involving petitioner's rights, privileges, and immunities secured by the Constitution of the United States.

Respondent submits that the Cuyahoga County Court of Appeals dismissed petitioner's appeal on the ground that petitioner did not timely file his notice of appeal in accordance with Ohio Revised Code, section 2505.07. Petitioner admits in his statement of the case that respondent's summary judgment was reaffirmed February 6th and his notice of appeal was not filed until April 20th, some seventy-three days later. It is clear that petitioner did not timely file said notice, and as a result, the appellate court had no jurisdiction to entertain his appeal. *Curren vs. Brooks*, 142 Ohio St. 107, 50 N.E.2d 995 (1943); *Kotch vs. DeGrab*, 168 Ohio St. 506, 156 N.E.2d 465 (1959). Once so dismissed, the only question for review is whether said dismissal was proper, as only the "particular order or judgment appealed from may be reviewed." *Keesicker vs. G. M. McKelvey Co.*, 141 Ohio St. 162, 47 N.E.2d 211 (1943), Syl. 2.

Respondent submits that the question herein is extremely narrow, and certainly does not involve petitioner's rights, privileges, and immunities secured by the United States Constitution. Petitioner has no one to blame but himself for his negligence in failing to keep abreast of his case and timely filing his notice of appeal.

II. Respondent affirmatively showed that the Court of Common Pleas, Lawrence County, Commonwealth of Pennsylvania, rendered a judgment against petitioner, and that said court had jurisdiction to render said judgment, thereby complying with Ohio Revised Code, section 2309.36, Pleading and Proving Judgment.

This case commenced as a relatively simple matter as respondent merely transferred its Pennsylvania judgment to Ohio in order to attempt to effect collection. At the hearing on respondent's motion for summary judgment, petitioner, choosing to represent himself, offered no evidence to support his contention that the Pennsylvania court did not have jurisdiction or that the judgment was void. He submitted no brief or affidavit in support of his position. Petitioner readily admitted that he received a $2,000.00 loan from the respondent and that he signed a note empowering any attorney of any court of record within the United States to appear and confess judgment. Before the court and attached to respondent's petition was a certified copy of the Pennsylvania court record showing that judgment had been confessed against petitioner. Such is clearly more than "a mere recital of jurisdiction." Contrary to petitioner's derogatory and unjust criticism, the Cuyahoga County Court of Common Pleas gave petitioner every consideration, but found on the evidence presented that reasonable minds could come to but one conclusion, and pursuant thereto, respondent was awarded summary judgment. Respondent had clearly complied with Ohio Revised Code, section 2309.36, Pleading and Proving Judgment. The difficulty in dealing with petitioner is reflected when he attempts to vacate a Pennsylvania judgment in an Ohio court, when he files a motion for new trial after the court granted respondent's motion for summary judgment, and when he waited some seventy-three days after

the entry on the final matter for review to file his notice of appeal, when Ohio law permits only twenty days.

III. Petitioner's claim is unsubstantial and frivolous thereby entitling respondent to damages pursuant to 28 U.S.C. § 1912.

Respondent submits that a matter of this nature appearing before this Honorable Court is absurd, and that this petition for writ of certiorari is so unsubstantial and without merit that respondent is entitled to damages for attorney fees, printing costs, and other expense pursuant to 28 U.S.C. § 1912. *Dunscombe vs. Sayle*, 340 F.2d 311 (5th Cir., 1965) cert. den. 382 U.S. 814, 86 S. Ct. 32, 15 L. Ed. 2d 62 (1965); *Lowe vs. Willacy*, 239 F.2d 179 (9th Cir., 1956); *Griffin Wellpoint Corp. vs. Munro-Langstroth, Inc.*, 269 F.2d 64 (1st Cir., 1959); and *Ginsburg vs. Stern*, 295 F.2d 698 (3rd Cir., 1961).

There should be no question that the only issue presented by this appeal is whether or not this case was properly dismissed by the Cuyahoga County Court of Appeals. Ohio law is clear and unambiguous that the timely filing of a notice of appeal is a necessary step in perfecting an appeal, and in the absence of such timely filing, a reviewing court is without jurisdiction. The fact that petitioner completely ignored this simple fundamental issue clearly depicts his intent to annoy and harass the respondent and create additional expense in the form of attorney fees. Petitioner's filing of this petition is not a law school game or mere exercise in legal brief writing. Respondent submits that this is a serious matter and vehemently requests that this Court deal with petitioner accordingly. See *Lowe vs. Willacy*, 239 F.2d 179 (9th Cir., 1956), where the court stated:

Since appellant by her own act has forced appellee to consider her brief and thereby necessarily to write his opposing brief, in affirming we adjudge to appellee just damages for his delay, 28 U.S.C. § 1912, of double costs and an amount equal to the fee paid his attorney for his services in the appeal and the amount paid for the printing of his brief, the two latter amounts to be shown by appellee's affidavit filed with the Clerk of this Court. *Lowe vs. Willacy*, Id. at 180.

CONCLUSION.

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

RICHARD A. OVIATT,

Attorney for Respondent.